MEDICAL MALPRACTICE UPDATE

The Supreme Judicial Court has ruled that the Rules of Professional Conduct may bar a law firm from withdrawing its representation of a plaintiff in a medical malpractice action. The SJC’s decision of Thomas M. Kiley, Petitioner (Docket No.: SJC-10767) involves the efforts of the firm Thomas M. Kiley & Associates, LLP (“Kiley”), to withdraw from representation of its client after the client’s attorney of record left the firm and the practice of law. At the time of the attorney of record’s departure, the case was approximately three years old, and the medical malpractice tribunal had convened and found in the plaintiff’s favor. The Superior Court (in the underlying action McGibbon v. Ebeid, Essex Superior Court, Civil Action No. 2007-02247) allowed the attorney of record’s motion to withdraw, however, ordered that another lawyer from Kiley enter his appearance to continue representation of the client. In so doing, the Superior Court relied upon several factors, including the client’s inability to find successor counsel, and discovery being behind schedule.

The SJC concluded that the Superior Court judge did not abuse his discretion in ordering that another Kiley attorney enter an appearance for the client (and in denying what was in effect Kiley’s motion to withdraw). The SJC discussed the limited circumstances set forth under the Rules of Professional Conduct (Rule 1.16) and Rules of Civil Procedure (Rule 11(c)), in which an attorney may withdraw following the entry of an appearance in a court case, and noted that other than offering conclusory assertions of “irreconcilable differences,” Kiley failed to set forth any justification under the Rules for termination of the client relationship. The SJC noted that the Rules clearly establish that an attorney may not terminate representation “simply because the attorney no longer wishes to continue the representation.” The SJC also specifically noted that the client’s relationship was with the Kiley firm, and accordingly, the attorney of record’s departure of the firm did not relieve Kiley of its contractual obligation to the client.

In affirming the Superior Court’s ruling, the SJC indicated that even if Kiley set forth a legitimate basis under the Rules to withdraw from its representation, the Superior Court appropriately took into account the impact of a withdrawal on the opposing party’s reasonable expectation of having the case efficiently adjudicated in coming to its decision.

In its ruling, the SJC addressed an argument raised by amicus brief that motions to withdraw by attorneys retained on a contingency fee should be more generously allowed to prevent meritless claims from being brought to trial. The SJC rejected this argument, noting the record, including the plaintiff’s prevailing at the malpractice tribunal, showed the malpractice claim was not without merit. The SJC further instructed:

“A law firm, after agreeing to represent a client for a contingent fee and filing a complaint that presumably complied with the requirement of a good faith basis under Mass. R. Civ. P. 11(a) may not withdraw from a case simply because it
recognizes belatedly that the case will not be profitable for the law firm. A lawyer's miscalculation of the time or resources necessary to represent a client, the likelihood of success, or the amount of damages 'is usually a dubious ground’ for withdrawal, because lawyers are better able than clients to forecast these matters. Attorneys who agree to represent clients on a contingent fee basis must choose their cases carefully, because the law does not allow them easily to jettison their mistakes, especially after the complaint has been filed.” (citations omitted).

If you would like a copy of this decision, please do not hesitate to contact this office.

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